

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 280 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-
and
Hon'ble MR.JUSTICE H.K.RATHOD sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
 5. Whether it is to be circulated to the Civil Judge? No :

G.S.R.T. CORPORATION

Versus

GITABEN,WD/O BALKRISHNA RAMDASPATEL

Appearance:

MR SN SHELAT for Petitioner
NOTICE SERVED for Respondent No. 1, 4
MR JITENDRA M PATEL for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 22/02/2000

ORAL JUDGEMENT

(Per : D.C.Srivastava, J.)

1. The appellant in this Appeal has challenged the Award of the Motor Accident Claims Tribunal, Nadiad, awarding compensation of Rs.1,41,170/- for the fatal accident in which the deceased Balkrishna riding on a cycle died on 5.11.1983 at 12.30 p.m. on the road.

2. The allegations in the claim petition are that the deceased Balkrishna was riding on his cycle and was going from Dakor to Kapadwanj side, when he reached the site of accident on 5.11.1983 at about 12.30 p.m. one S.T.Bus came from opposite direction and dashed with the deceased. It was alleged that the deceased was on his cycle towards his left side on the road and the Bus had gone on the wrong side and caused the accident. It was alleged that the accident occurred due to rash and negligent driving of the bus by the opposite party No.1 before the Tribunal. The Opposite Party No.2 is the appellant before us.

3. The allegations made in the claim petition were denied by the appellant as well as by the Bus driver.

4. A sum of Rs.4 lacs was claimed as compensation, but it was subsequently reduced to Rs.2 lacs only.

5. After considering oral and documentary evidence on record the Tribunal found that it was on account of rash and negligent driving of the S.T.Bus by the driver Samatsinh, that the deceased was dragged on the right and was injured and on account of injuries sustained he died. On the quantum of compensation the Tribunal assessed the annual income of the deceased from his salary at Rs.7200/- p.a. The income from agriculture was also assessed by the Tribunal at Rs.12,000/- per year. The multiplier of 10 was adopted by the Tribunal and as such compensation of Rs.1,28,000/- was awarded besides Rs.5000/- for conventional amount, Rs.2000/- for pain and suffering, Rs.800/- for medicine and Rs.170/- for Ambulance charges, Rs.200/- for bringing the Dead Body from the hospital to the village of the deceased and Rs.5000/- for funeral expenses. In this way, a sum of Rs.1,41,170/- was awarded as against the reduced claim of Rs.2 lacs set up by the claimants. The claimants are the widow and parents of the deceased. The Tribunal refused to award any compensation to the widow of the deceased on the ground that she was second married wife of the deceased. Thus, the compensation was awarded only to the parents of the deceased.

6. We have heard learned Counsel for the appellant and the respondent and also examined the Judgment of the Tribunal as well as oral evidence of material witnesses. Shri Hardik C. Raval, learned Counsel for the appellant has argued on the basis of statement of claimants' witness Bhanabhai Vaghjibhai and the evidence of driver Samatsinh that it cannot be said by any stretch of imagination that the driver was driving the vehicle rashly and negligently on account of which the accident occurred. He tried to argue that the cyclist was also liable for contributory negligence because he was coming from opposite direction and he could have seen that the driver was negotiating his vehicle in order to save the scooterist who also suddenly appeared from the opposite direction. As against this the learned Counsel for the respondent contended that the cyclist was not at all at fault and as such the negligence of the driver has to be accepted. However, we are unable to accept this contention. It may not be contributory negligence of the cyclist nor could it be said that the cyclist could have avoided the accident, but at the same time from the evidence on record and the circumstances of the case we are unable to hold that it was a case of absolute negligence on the part of the driver. From the statement of the witness Bhanabhai, one of the witness examined by the claimant it can not be said that the driver was driving the vehicle rashly and negligently. This witness stated that the S.T.Bus came from Kapadwanj side and dashed with the deceased. He further stated that the deceased was riding his cycle on his left hand side on the road. He also stated that the bus was coming on its correct side. If these two statements are read together it follows that both, the bus driver and the cyclist were on their correct side. The witness further stated that one scooterist came on the road from the side of the society and the driver took the bus on the right side of the road. This must have been done with a view to save the scooterist. Learned Counsel for the parties could not point out from the record as to what happened to the scooterist and whether he sustained injuries or not. It can, therefore, be said that both the bus driver and the cyclist were on their correct side and because suddenly one scooterist appeared naturally the bus driver would have tried to save the scooterist and if in that attempt he took his vehicle towards right side it cannot be said that he was so rash and negligent that he could not control his vehicle and dashed with the cyclist. Bhanabhai further stated that he was in his Varanda at a distance of 20 ft. from the scene of occurrence. As such he had time and opportunity to see the accident. He was an eye witness and the Tribunal committed no error in

placing reliance upon this witness. He was also interrogated by the Police in the Criminal Case. According to this witness the road was 20 ft. wide and there was 4 ft. kachcha shoulder on both side of the road. He admitted that the deceased was not plying his cycle in the centre of road and that the cyclist dashed on the left hand side of the Bus. His statement that after the accident the bus stopped at a distance of 5 ft. itself shows that the bus was not driven at an excessive speed nor it can be said that it was driven rashly and negligently. If the driver would have been rash and negligent he could not have been successful in stopping the vehicle just at a distance of 5 ft. from the scene of occurrence.

7. The Tribunal disbelieved the statement of the driver Samatsinh on the sole ground that he is interested in the out-come of the proceedings. He may be interested witness, but since he received substantial corroboration from the statement of Witness No.3 Bhanabhai, the witness examined by the claimant, it can safely be said hat the driver could be relied on the point that he was not driving the bus rashly and negligently.

8. The witnesses may come and tell lie, but not the circumstances. The manner in which the scooterists drive their vehicle rashly on the high-way cannot be ignored or list sight of. It is thus possible in the facts and circumstances of the case that the driver's attempt to save the scooterist might have caused the accident in which the deceased was thrown on the road and ultimately succumbed to his injuries. As such even though it may not be a case of contributory negligence on the part of the cyclist it can safely be said from the circumstances of the case as well as from oral and documentary evidence that the driver was careful in saving the scooterist and in attempt to save the scooterist he dashed against the deceased who was going on his cycle. In these circumstances we are unable to hold that the driver was cent per cent liable for the accident. In the facts and circumstances of the case we are of the view that 80 % negligence of the driver would meet the ends of justice.

9. Shri Hardik C. Raval on the point of compensation has also drawn our attention to the Judgment of the Tribunal and has assailed the judgment on the ground that the income of the deceased assessed by the Tribunal is on the higher side. We are unable to accept his contention. From the documentary evidence it was established that the deceased was serving in Pragati Cement Factory and was earning Rs.600/- p.m. The claim

was set-up for Rs.7000/- p.a. as salary of the deceased, but since from the record of the cement company it was proved that the deceased was earning Rs.600/- per month, the Tribunal was justified in holding that the annual income of the deceased was Rs.7200/- p.a.

10. On the point of income from agriculture, the Tribunal has taken pains to examine the entire evidence on record and has not blindly accepted the evidence and the claim of the claimants. The Tribunal has taken into account the total area of the land under cultivation which was 72 Acres. It had also taken into account various crops. Since there was no reliable evidence of income from other crops and there was reliable evidence about the income from the cotton crop, the Tribunal was justified in holding that annual income from agriculture was Rs.50,000/-. In this way estimate of income arrived at by the Tribunal does not suffer from any factual error. The compensation awarded on other counts does not seem to be excessive. However, in view of our findings above that it is a case of 80 % negligence of the bus driver that the accident had occurred, we have to reduce the compensation of Rs.1,28,000/- by 20 % and we do not propose to interfere with the compensation awarded on other counts Nos.2 to 7 in the Award of the Tribunal. In this way the total amount of Rs.1,41,170/- when reduced to 20 % of the total award, would come to Rs.1,15,570/-.

11. In view of the aforesaid discussions the Appeal succeeds in part only. The Award is modified to the extent of Rs.1,15,570/-. The direction for payment of compensation as given by the Tribunal is up-held. In the circumstances of the case no order as to costs.

sd/-

(D. C. Srivastava, J.)

Date : 22.2.2000 sd/-

(H. K. Rathod, J.)

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